

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, RPP, OPT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for an order or possession; a monetary order; and an order to have the landlord comply with the Residential Tenancy Act, Regulation, or tenancy agreement and return personal property.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

At the start of the hearing the parties confirmed that the tenant is no longer living at the dispute address and all belongings that were left in the rental unit have been move to the tenant's storage locker.

### Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to an order of possession; to a monetary order for stress and stolen property; to an order to have the landlord comply and return of personal property, pursuant to sections 46, 54, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began on January 1, 2010 as a 6 month fixed term tenancy for a monthly rent of \$850.00 due on the 1<sup>st</sup> of the month with a security deposit of \$425.00 paid on December 12, 2010.

From the written submissions and the verbal testimony the tenant began to have difficulty paying rent in February 2010 and on February 1, 2010 the tenant wrote a note to the landlord's indicating that she was no longer able to afford the rent at this location and that "I have no choice but to give my notice but will do whatever I can to help".

The tenant submitted that in the last week of March she allowed her brother to move in to the rental unit. The tenant testified that through the month of April 2010 she told the landlord that she would have to stay at least until the end of April 2010. The tenant submitted that she found a new place and had May 2010 rent paid directly to her new landlord on cheque issue day (April 21, 2010).

The tenant contends that on May 7, 2010 her brother stole her key to the rental unit and when she went to the rental unit on May 8, 2010 her brother would not let her in and so she called the police. When the police arrived they called the landlords home and the tenant testified that the landlord stated that they had re-rented the rental unit to the tenant's brother and they would not let her into the rental unit.

The landlords testified that they did not at any point enter into a tenancy agreement with the tenant's brother nor inform the police that they had re-rented the unit to the tenant's brother. The landlords testified that the tenant just became more unreasonable and the police took her away.

The tenant testified that she had attended the Residential Tenancy Branch and spoke with an Information Officer who conducted an intervention on behalf of the tenant by contacting the landlord and advising the landlord that she had not given the tenancy any notice to end the tenancy and as such the tenant should be allowed back into the rental unit.

The landlord testified that they had never changed locks or restricted her ability to enter the rental unit but rather it was her brother who had done so. The landlords also testified that as a result of the call from the Residential Tenancy Branch they issued a 10 Day Notice to End Tenancy for Unpaid Rent and posted it on the rental unit door. The landlords also noted that when they spoke with the tenant's brother they advised him that the notice was applied to him as well.

### Analysis

As the tenant no longer lives at the dispute address and her belongs are in her possession in a storage facility the matter of cancelling the 10 Day Notice to End Tenancy for Unpaid Rent; requesting an order to have the landlord comply with the Act, regulation or tenancy agreement and the tenant's application for an order of possession to be moot, I therefore dismiss this part of the tenant's application.

I do note here that the landlord remains at liberty to file an Application for Dispute Resolution to claim against the tenant for any unpaid rent. In addition I remind the landlord of their obligations under Section 38 of the Act regarding the settlement of the security deposit collected at the start of the tenancy.

As to the tenant's claim for compensation in the amount of \$1,400.00 for compensation for damage or loss under the Act, regulation and tenancy agreement the tenant must meet the following 4 tests:

1. That a loss or damage exists;
2. The loss or damage results from a violation of the *Act*;
3. The establishment of the value of the damage or loss; and
4. The applicant took steps to mitigate the loss.

The landlord's did not dispute the tenant lost personal items or property but they also testified that they did not know what belonged to the tenant and what belonged to her brother. The tenant did outline a number of items missing and I accept that some of her belongings have gone missing.

The tenant, however, has failed to provide any substantiating proof that the loss or damage resulted from a violation of the *Act* on the landlord's part. The tenant stated she is the one who let her brother stay with her; that it was her brother he stole her key and would not let her into the rental unit; and in fact she states that her brother is the one who took her possessions.

In particular, the tenant's claim that the landlords had re-rented the dispute address to her brother and as such was in violation of the *Act* is unsubstantiated and in fact the landlord testified that the rental unit was completely vacated by both the tenant on May 22, 2010 and her brother on May 25, 2010.

### Conclusion

As a result of my findings above, I dismiss the tenant's application in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 02, 2010.

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Dispute Resolution Officer